

HOUSE BILL NO. 640

INTRODUCED BY D. MCGEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING STATE LAWS CONCERNING ELECTRICAL ENERGY IN ORDER TO STIMULATE ECONOMIC DEVELOPMENT; AUTHORIZING THE BOARD OF INVESTMENTS TO MAKE LOANS TO ELECTRICAL ENERGY GENERATORS TO CONSTRUCT ELECTRICAL ENERGY GENERATION FACILITIES IN MONTANA; REQUIRING A LONG-TERM CONTRACT WITH THE DEFAULT SUPPLIER AS A CONDITION PRECEDENT TO BEING ELIGIBLE FOR AN INVESTMENT; AUTHORIZING THE STATE TO ISSUE GENERAL OBLIGATION BONDS TO BE USED TO PURCHASE POWER FOR LARGE CUSTOMERS OR TO PURCHASE OR BUILD AN ELECTRICAL ENERGY GENERATION FACILITY; CREATING A STATE DEBT; INCREASING THE ELECTRICAL ENERGY PRODUCERS TAX AND PLEDGING THE TAX INCREASE TO BOND REPAYMENT; INCREASING THE WHOLESALE ENERGY TRANSACTION TAX; REVISING THE PROPERTY TAX CLASSIFICATION AND RATE FOR CERTAIN ELECTRICAL GENERATING PROPERTY; ALLOWING A WINDOW OF OPPORTUNITY FOR A LARGE CUSTOMER TO RECEIVE ELECTRICAL ENERGY FROM THE DEFAULT SUPPLIER; PROVIDING RESTRICTIONS ON THE REMARKETING OF ELECTRICAL ENERGY PURCHASED FROM THE DEFAULT SUPPLIER; PROVIDING TAX EXEMPTIONS FROM PROPERTY TAXES AND CORPORATE INCOME TAXES FOR CERTAIN ENTITIES; AMENDING SECTIONS 15-6-156, 15-31-101, 15-31-102, 15-51-101, 15-51-103, 15-72-104, 15-72-106, 69-8-201, AND 69-8-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Long-term contract. (1) A Montana electrical energy generator who enters into a long-term contract with the default supplier to provide electricity to Montana customers for the cost of production, including an allowance of ~~45%~~ 9.5% for the cost of capital, is eligible to participate in the program provided for in [section 5]. The public service commission shall determine the cost of production.

(2) For the purposes of this section, a "long-term contract" means a contract with a term of at least 15 years.

1

2 NEW SECTION. **Section 2. Large customer contract requirement -- conservation measures.** (1)

3 A contract for the supply of electrical energy generated in Montana between the default supplier and a
4 Montana customer with loads of 1,000 kilowatts or greater on an annual basis must contain a provision
5 that if the customer no longer requires the supply, the supply must be offered to other Montana large
6 customers, aggregated customers, or small customers at the existing contract price before the supply may
7 be offered to out-of-state customers.

8 (2) If a large customer institutes conservation measures or implements alternative energy
9 measures that show a reduction in contracted electrical energy supply of at least 200 kilowatts a year,
10 then the large customer may sell the surplus electrical energy to other large customers not served by the
11 default supplier for 0.05 cent per kilowatt above the contract price.

12

13 NEW SECTION. **Section 3. Power plant purchase -- bonds.** (1) If at least 300 megawatts of
14 annual capacity is not dedicated to producing electrical energy for Montana large customers at a rate of
15 not more than 3 cents per kilowatt, plus transportation charges, within 30 days after [the effective date
16 of this act], the board of examiners may issue general obligation bonds in an amount of up to \$400 million
17 to be used by the state to purchase the necessary power for large customers or to purchase or invest in
18 a plant to generate electrical energy for large customers. The plant is not required to be located in
19 Montana, but it must be located on a power grid that allows delivery to Montana customers. If the power
20 plant is not located in Montana, the purchase price of the power plant may be as much as 3% more than
21 a similar power plant if that power plant enters into a contract with a Montana coal producer to use coal
22 mined in Montana to generate the electrical energy for sale to Montana customers at the rate specified in
23 [section 1].

24 (2) The debt service payments on the bonds or power purchased with bond proceeds are payable
25 from the account provided for in 15-51-103(2).

26 (3) The department of administration may enter into a contract for the operation and maintenance
27 of the plant.

28 (4) The proceeds of the sale of electrical energy produced by the generating plant must be
29 deposited in the state special revenue account provided for in 15-51-103(2).

30

1 **NEW SECTION.** **Section 4. Office of energy director.** (1) There is an office of the state energy
2 director. The state energy director is the administrator of the office. The energy director is attached to
3 the department of commerce for administrative purposes only. The energy director may appoint a deputy
4 director. The energy director shall implement [sections 1 through 5] and work with the public service
5 commission to implement Title 69, chapter 8.

6 (2) The energy director is entitled to a salary equal to the salary of a member of the pacific
7 northwest electric power and conservation planning council provided for in 90-4-402. The deputy director
8 is entitled to a salary equal to the salary of a public service commissioner as provided in 2-16-405(1)(g).

9
10 **NEW SECTION.** **Section 5. Low-interest loans -- restrictions on use -- tax holiday.** (1) The board
11 of investments may make a low-interest loan to an electrical energy generator who is eligible under
12 [section 1]. The electrical energy generator shall use the proceeds of the loan to construct electrical
13 generation facilities, transmission facilities, and railroad and pipeline capacity in Montana or to construct
14 a facility outside of Montana if the electrical energy generator agrees to purchase coal that is subject to
15 the tax provided for in Title 15, chapter 35, to generate electrical energy at the facility constructed with
16 the loan proceeds. Preference must be given to projects located in Montana. The rate of interest on a
17 loan may not exceed a comparable market rate of interest.

18 (2) The board of investments shall make up to \$100 million a year for ~~10~~ 5 years available for the
19 purposes of subsection (1). ~~The \$100 million a year may include funds allocated from the treasure state~~
20 ~~endowment fund pursuant to Title 90, chapter 6, part 7, coal severance tax bond water projects as~~
21 ~~provided in Title 17, chapter 5, part 7, school infrastructure loans as provided in 17-5-703, coal trust~~
22 ~~value-added loans pursuant to Title 17, chapter 6, part 3, electrical energy producers tax contributions,~~
23 ~~general obligation bonds, or other available funds. Tax proceeds generated by projects funded under this~~
24 ~~section must be directly applied to the program provided for in this section after local impacts are~~
25 ~~addressed. At least 50% of the tax proceeds must be used for future energy development. THE BOARD OF~~
26 ~~INVESTMENTS MAY REQUEST THE BOARD OF EXAMINERS TO ISSUE UP TO \$500 MILLION OF GENERAL OBLIGATION BONDS~~
27 ~~IN ADDITION TO THE BONDS AUTHORIZED IN [SECTION 3].~~

28 (3) An eligible utility is eligible for the tax exemptions authorized in [section 6], 15-31-102, and
29 15-72-104 for a period specified by the public service commission.

1 NEW SECTION. **Section 6. Electrical generation and transmission facility exemption.** (1) An

2 electrical energy generation facility or an electrical energy transmission or distribution facility may be
3 exempt from property taxation or the corporate license or income tax, at the appropriate level, for the tax
4 year period specified by the public service commission pursuant to [section 5].

5 (2) (a) If an owner or operator of an electrical generation facility contracts to sell a portion of the
6 facility's net generating capacity at the rate specified in [section 1] for use within the state of Montana,
7 that facility may be exempt from a portion of property taxes, the wholesale energy transaction tax, or the
8 corporate license or income tax for the specified period or may receive accelerated depreciation on
9 property for the specified period.

10 (b) If an owner or operator signs a contract to sell power within the state as provided in
11 subsection (2)(a) and then fails to perform the contract for the full contract period, the exemption in
12 subsection (2)(a) is void and the property is subject to a rollback tax as provided in [section 7].

13 (3) (a) For the purposes of this section, "electrical generation facility" means any combination of
14 a physically connected generator or generators, associated prime movers, and other associated property,
15 including appurtenant land and improvements and personal property, that are normally operated together
16 to produce electric power. The term includes but is not limited to generating facilities that produce
17 electricity from coal-fired steam turbines, oil or gas turbines, wind turbines, solar power sources, fuel cells,
18 or turbine generators that are driven by falling water.

19 (b) The term does not include electrical generation facilities used for noncommercial purposes or
20 exclusively for agricultural purposes.

21 (c) The term also does not include a qualifying small power production facility, as that term is
22 defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the
23 generation or sale of electricity other than electric power from a small power production facility and
24 classified under 15-6-134 and 15-6-138.

25 (4) For the purposes of this section, "electrical energy transmission or distribution facility" means:

26 (a) a facility used to provide transmission services as determined by the federal energy regulatory
27 commission and the public service commission; or

28 (b) a facility by and through which electrical energy is received from a transmission services
29 provider as defined in 69-8-103 and distributed to the customer and that are controlled and operated by
30 a distribution services provider as defined in 69-8-103.

1

2 **NEW SECTION.** **Section 7. Rollback tax -- computation.** (1) (a) If an owner or operator fails to
3 perform the contract pursuant to [section 6(2)(b)], the property is subject to a rollback tax in addition to
4 the property tax levied on the property. The rollback tax is a lien on the property or income produced by
5 the property and is due and payable by the owner of the property within 30 days after failure to perform
6 the contract.

7 (b) As used in this section, "rollback" means the period of time that an owner or operator of an
8 electrical generation facility was exempt from property taxes, the wholesale energy transaction tax, or the
9 corporate license or income tax pursuant to [section 6(1)].

10 (2) The department shall determine the amount of rollback tax due on the property by:

11 (a) determining the taxable value of the property;

12 (b) multiplying this value by the sum of the annual mill levies applied in the taxing jurisdiction in
13 which the land is located during the rollback period; and

14 (c) subtracting from this figure the actual property tax paid on the property during this period, if
15 any.

16 (3) The department shall calculate any rollback tax for purposes of the wholesale energy
17 transaction tax or for corporate license or income tax purposes based upon the tax exemption granted.

18

19 **Section 8.** Section 15-6-156, MCA, is amended to read:

20 **"15-6-156. Class thirteen property -- description -- taxable percentage.** (1) Except as provided in
21 subsections (2)(a) through (2)(f), class thirteen property includes:

22 (a) electrical generation facilities of a centrally assessed electric power company;

23 (b) electrical generation facilities owned or operated by an exempt wholesale generator or an entity
24 certified as an exempt wholesale generator pursuant to section 32 of the Public Utility Holding Company
25 Act of 1935, 15 U.S.C. 79z-5a;

26 (c) noncentrally assessed electrical generation facilities owned or operated by any electrical energy
27 producer; and

28 (d) allocations of centrally assessed telecommunications services companies.

29 (2) Class thirteen property does not include:

30 (a) property owned by cooperative rural electric cooperative associations classified under

1 15-6-135;

2 (b) property owned by cooperative rural electric cooperative associations classified under
3 15-6-137;

4 (c) allocations of electric power company property under 15-6-141;

5 (d) electrical generation facilities included in another class of property;

6 (e) property owned by cooperative rural telephone associations and classified in class five; and

7 (f) property owned by organizations providing telecommunications services and classified in class
8 five.

9 (3) (a) For the purposes of this section, "electrical generation facilities" means any combination
10 of a physically connected generator or generators, associated prime movers, and other associated
11 property, including appurtenant land and improvements and personal property, that are normally operated
12 together to produce electric power for sale at the rates provided for in [section 1]. The term includes but
13 is not limited to generating facilities that produce electricity from coal-fired steam turbines, oil or gas
14 turbines, or turbine generators that are driven by falling water.

15 (b) The term does not include electrical generation facilities used for noncommercial purposes or
16 exclusively for agricultural purposes.

17 (c) The term also does not include a qualifying small power production facility, as that term is
18 defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the
19 generation or sale of electricity other than electric power from a small power production facility and
20 classified under 15-6-134 and 15-6-138.

21 (4) Class thirteen property is taxed at 6% of its market value."
22

23 NEW SECTION. **Section 9. Class fourteen property.** (1) Class fourteen property includes:

24 (a) electrical generation facilities of a centrally assessed electric power company;

25 (b) electrical generation facilities owned or operated by an exempt wholesale generator or an entity
26 certified as an exempt wholesale generator pursuant to section 32 of the Public Utility Holding Company
27 Act of 1935, 15 U.S.C. 79z-5a; and

28 (c) noncentrally assessed electrical generation facilities owned or operated by any electrical energy
29 producer.

30 (2) Class fourteen property does not include electrical generation facilities included in another class

1 of property.

2 (3) (a) For the purposes of this section, "electrical generation facilities" means any combination
3 of a physically connected generator or generators, associated prime movers, and other associated
4 property, including appurtenant land and improvements and personal property, that are normally operated
5 together to produce electric power for sale at the rates other than those provided for in [section 1]. The
6 term includes but is not limited to generating facilities that produce electricity from coal-fired steam
7 turbines, oil or gas turbines, or turbine generators that are driven by falling water.

8 (b) The term does not include electrical generation facilities used for noncommercial purposes or
9 exclusively for agricultural purposes.

10 (c) The term also does not include a qualifying small power production facility, as that term is
11 defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the
12 generation or sale of electricity other than electric power from a small power production facility and
13 classified under 15-6-134 and 15-6-138.

14 (4) Class fourteen property is taxed at 12% of its market value.

15

16 **Section 10.** Section 15-31-101, MCA, is amended to read:

17 **"15-31-101. Organizations subject to tax.** (1) The term "corporation" includes associations,
18 joint-stock companies, common-law trusts and business trusts which do business in an organized capacity,
19 and all other corporations whether created, organized, or existing under and pursuant to the laws,
20 agreements, or declarations of trust of any state, country, or the United States.

21 (2) The terms "engaged in business" and "doing business" both mean actively engaging in any
22 transaction for the purpose of financial or pecuniary gain or profit.

23 (3) Except as provided in 15-31-102, 15-31-103, or 33-2-705(4) or as may be otherwise
24 specifically provided, every corporation engaged in business in the state of Montana shall annually pay to
25 the state treasurer as a license fee for the privilege of carrying on business in this state the percentage or
26 percentages of its total net income for the preceding taxable year at the rate set forth in this chapter. In
27 the case of corporations having income from business activity which is taxable both within and outside
28 of this state, the license fee must be measured by the net income derived from or attributable to Montana
29 sources as determined under part 3. Except as provided in 15-31-502, this tax is due and payable on the
30 15th day of the 5th month following the close of the taxable year of the corporation. However, the tax

1 becomes a lien as provided in this chapter on the last day of the taxable year in which the income was
2 earned and is for the privilege of carrying on business in this state for the taxable year in which the income
3 was earned.

4 (4) Every bank organized under the laws of the state of Montana, of any other state, or of the
5 United States and every savings and loan association organized under the laws of this state or of the
6 United States is subject to the Montana corporation license tax provided for under this chapter. A foreign
7 capital depository chartered under the laws of Montana is not subject to the Montana corporation license
8 tax provided for under this chapter until October 1, 2012. For taxable years beginning on and after
9 January 1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C.
10 548)."

11
12 **Section 11.** Section 15-31-102, MCA, is amended to read:

13 **"15-31-102. Organizations exempt from tax -- unrelated business income not exempt.** (1) Except
14 as provided in subsection (3), there may not be taxed under this title any income received by any:

15 (a) labor, agricultural, or horticultural organization;

16 (b) fraternal beneficiary, society, order, or association operating under the lodge system or for the
17 exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for
18 the payment of life, sick, accident, or other benefits to the members of the society, order, or association
19 or their dependents;

20 (c) cemetery company owned and operated exclusively for the benefit of its members;

21 (d) corporation or association organized and operated exclusively for religious, charitable,
22 scientific, or educational purposes, no part of the net income of which inures to the benefit of any private
23 stockholder or individual;

24 (e) business league, chamber of commerce, or board of trade not organized for profit, no part of
25 the net income of which inures to the benefit of any private stockholder or individual;

26 (f) civic league or organization not organized for profit but operated exclusively for the promotion
27 of social welfare;

28 (g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable
29 purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

30 (h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation

1 company, mutual or cooperative telephone company, or similar organization of a purely local character,
2 the income of which consists solely of assessments, dues, and fees collected from members for the sole
3 purpose of meeting its expenses;

4 (i) cooperative association or corporation engaged in the business of operating a rural
5 electrification system or systems for the transmission or distribution of electrical energy on a cooperative
6 basis;

7 (j) corporations or associations organized for the exclusive purpose of holding title to property,
8 collecting income from the property, and turning over the entire amount of the income, less expenses, to
9 an organization that itself is exempt from the tax imposed by this title;

10 (k) wool and sheep pool, which is an association owned and operated by agricultural producers
11 organized to market association members' wool and sheep, the income of which consists solely of
12 assessments, dues, and fees collected from members for the sole purpose of meeting its expenses.
13 Income, for this purpose, does not include expenses and money distributed to members contributing wool
14 and sheep.

15 (l) corporation that qualifies as a domestic international sales corporation (DISC) under the
16 provisions of section 991, et seq., of the Internal Revenue Code ~~{26 U.S.C. 991, et seq.}~~ and that has
17 in effect for the entire taxable year a valid election under federal law to be treated as a DISC. If a
18 corporation makes that election under federal law, each person who at any time is a shareholder of the
19 corporation is subject to taxation under Title 15, chapter 30, on the earnings and profits of this DISC in
20 the same manner as provided by federal law for all periods for which the election is effective.

21 (m) farmers' market association not organized for profit, no part of the net income of which inures
22 to the benefit of any member, but that is organized for the sole purpose of providing for retail distribution
23 of homegrown vegetables, handicrafts, and other products either grown or manufactured by the seller;

24 (n) common trust fund as defined in 26 U.S.C. 584(a);

25 (o) foreign capital depository chartered under the provisions of 32-8-104, 32-8-201, and
26 32-8-202;

27 (p) entity designated by the public service commission pursuant to [sections 5 and 6].

28 (2) In determining the license fee to be paid under this part, there may not be included any
29 earnings derived from any public utility managed or operated by any subdivision of the state or from the
30 exercise of any governmental function.

(3) Any unrelated business taxable income, as defined by section 512 of the Internal Revenue Code of 1954 (26 U.S.C. 512), as amended, earned by any exempt corporation resulting in a federal unrelated business income tax liability of more than \$100 must be taxed as other corporation income is taxed under this title. An exempt corporation subject to taxation on unrelated business income under this section shall file a copy of its federal exempt organization business income tax return on which it reports its unrelated business income with the department of revenue."

Section 12. Section 15-51-101, MCA, is amended to read:

"15-51-101. Rate of tax -- electrical energy producers. ~~(1) Except as provided in subsection (2), in~~ addition to the license tax now provided by law, each person or other organization now engaged in the generation, manufacture, or production of electricity and electrical energy in the state of Montana, either through waterpower or by any other means, for barter, sale, or exchange ~~(and hereinafter referred to as the "producer")~~ shall on or before the 30th day after each calendar quarter, for quarterly periods ending March 31, June 30, September 30, and December 31, render a statement to the department of revenue showing the gross amount, except for actual and necessary plant use, required to produce the ~~energy of~~ electricity and electrical energy produced, manufactured, or generated during the preceding calendar quarter without any deduction and shall pay a license tax ~~thereon~~ on the electrical energy produced in the sum of \$.0002 per kilowatt hour on all ~~such~~ electricity and electrical energy generated, manufactured, or produced, measured at the place of production and as shown on the statement required in the manner and within the time ~~hereinafter~~ provided in this part.

(2) An exempt wholesale generator, as defined in 15 U.S.C. 79z-5a, shall pay a license tax in the amount of \$.06 per kilowatt hour on all of the electricity and electrical energy that it generates, manufactures, or produces, measured at the place of production for each calendar quarter as provided in subsection (1).

(3) The person engaged in the generation, manufacture, or production of electricity and electrical energy is referred to as the producer for purposes of this part."

Section 13. Section 15-51-103, MCA, is amended to read:

"15-51-103. Disposition of revenue -- penalty and interest on delinquency. (1) The department shall, in accordance with the provisions of 15-1-501, promptly remit the collected taxes to the state

1 treasurer. Taxes imposed under 15-51-101(1) must be deposited in the general fund. Taxes not paid on
2 the due date are delinquent, and penalty and interest must be added to the delinquent taxes as provided
3 in 15-1-216.

4 (2) Taxes imposed under 15-51-101(2) must be deposited in a state special revenue account to
5 be used to provide debt service payments on the power plant or electrical energy purchased pursuant to
6 [section 3], TO PROVIDE DEBT SERVICE PAYMENTS ON BONDS ISSUED PURSUANT TO [SECTION 5], to pay for
7 contracted services for the operation and maintenance of the plant, and to fund appropriations to pay legal
8 costs incurred by the state in defending electrical energy ratepayers."

9

10 **Section 14.** Section 15-72-104, MCA, is amended to read:

11 **"15-72-104. Wholesale energy transaction tax -- rate of tax -- exemptions -- cost recovery.** (1) (a)
12 Except as provided in subsection (3), a wholesale energy transaction tax is imposed upon electricity
13 transmitted within the state as provided in this section. The tax is imposed at a rate of ~~0.015~~ 0.045 cent
14 per kilowatt hour of electricity transmitted by a transmission services provider in the state.

15 (b) For electricity produced in the state for delivery outside of the state, the taxpayer is the person
16 owning or operating the electrical generation facility producing the electricity. The transmission services
17 provider shall collect the tax from the person based upon the kilowatt hours introduced onto transmission
18 lines from the electrical generation facility. The amount of kilowatt hours subject to tax must be reduced
19 by 5% to compensate for transmission line losses.

20 (c) For electricity produced in the state for delivery within the state, the taxpayer is the distribution
21 services provider. The transmission services provider shall collect the tax based upon the amount of
22 kilowatt hours of electricity delivered to the distribution services provider. The taxpayer may apply for a
23 refund for overpayment of taxes pursuant to 15-72-116.

24 (d) For electricity produced outside the state for delivery inside the state, the taxpayer is the
25 distribution services provider. The transmission services provider shall collect the tax based upon the
26 amount of kilowatt hours of electricity delivered to the distribution services provider.

27 (e) For electricity delivered to a distribution services provider that is a rural electric cooperative
28 for delivery to purchasers that have opted for customer choice under the provisions of Title 69, chapter
29 8, part 3, the taxpayer is the distribution services provider. The transmission services provider shall collect
30 the tax based on the amount of kilowatt hours of electricity delivered to the distribution services provider

1 that is attributable to customers that have opted for customer choice.

2 (f) For electricity delivered to a distribution services provider that prior to May 2, 1999, was
3 owned by a public utility as defined in 69-3-101, the tax is imposed on the successor distribution services
4 provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours
5 of electricity delivered to the distribution services provider.

6 (2) (a) If more than one transmission services provider transmits electricity, the last transmission
7 services provider transmitting or delivering the electricity shall collect the tax.

8 (b) If the transmission services provider is an agency of the United States government, the
9 distribution services provider receiving the electricity shall self-assess the tax subject to the provisions of
10 this part.

11 (c) If an electrical generation facility located within the state produces electricity for sale inside
12 and outside the state, sales within the state are considered to have come from electricity produced within
13 the state for purposes of the tax imposed by this section.

14 (3) (a) Electricity transmitted through the state that is not produced or delivered in the state is
15 exempt from the tax imposed by this section.

16 (b) Electricity produced in the state by an agency of the of the United States government for
17 delivery outside of the state is exempt from the tax imposed by this section.

18 (c) Electricity delivered to a distribution services provider that is a municipal utility described in
19 69-8-103(5)(b) or a rural electric cooperative organized under the provisions of Title 35, chapter 18, is
20 exempt from the tax imposed by this section.

21 (d) Electricity delivered to a purchaser that receives its power directly from a transmission or
22 distribution facility owned by an entity of the United States government on or before May 2, 1997, or
23 electricity that is transmitted exclusively on transmission or distribution facilities owned by an entity of
24 the United States government on or before May 2, 1997, is exempt from the tax imposed by this section.

25 [(e) Electricity delivered by a distribution services provider to a customer with loads of 1,000
26 kilowatts or greater that was first served by a public utility after December 31, 1996, is exempt from the
27 tax imposed by this section, provided that the customer purchases the electricity pursuant to a contract
28 or contracts that establish the purchase price or prices of electricity. The exemption allowed by this
29 subsection (3)(e) does not apply to electricity purchased under a renewal or extension of an existing
30 contract or existing contracts.]

(4) A distribution services provider is allowed to recover the tax imposed by this section and the administrative costs to comply with this part in its rates. (Bracketed language terminates January 1, 2003--sec. 40, Ch. 556, L. 1999.)"

Section 15. Section 15-72-106, MCA, is amended to read:

"15-72-106. Collection of wholesale energy transaction tax -- disposition of revenue. (1) A transmission services provider shall collect the tax imposed under 15-72-104 from the taxpayer and pay the tax collected to the department. If the transmission services provider collects a tax in excess of the tax imposed by 15-72-104, both the tax and the excess must be remitted to the department.

(2) A self-assessing distribution services provider is subject to the provisions of this part.

(3) The wholesale energy transaction tax collected under this part must be deposited as follows:

(a) The proceeds from 0.015 cent per kilowatt hour of the tax must be deposited in a state special revenue account to be used to fund the office and activities of the state energy director as provided in [section 4].

(b) The remaining proceeds must be deposited in the general fund."

Section 16. Section 69-8-201, MCA, is amended to read:

"69-8-201. Public utility -- transition to customer choice -- waiver. (1) A public utility shall, except as provided in this section, adhere to the following deadlines:

~~(a) On~~ Subject to subsection (6), on or before July 1, 1998, all customers with individual loads greater than 1,000 kilowatts and for loads of the same customer with individual loads at a meter greater than 300 kilowatts that aggregate to 1,000 kilowatts or greater must have the opportunity to choose an electricity supplier.

(b) Subject to subsection (2), and as soon as is administratively feasible but before July 1, 2002, all other public utility customers must have the opportunity to choose an electricity supplier.

(2) (a) Except as provided for in subsection (4), the commission may determine that additional time is necessary for customers identified in subsection (1)(b); however, the implementation of full customer choice may not be delayed beyond July 1, 2004.

(b) A determination by the commission that additional time is necessary for subsection (1)(b) customers must be made at least 60 days in advance of the scheduled date and must be based on one

1 or more of the following considerations:

2 (i) implementation would not be administratively feasible;

3 (ii) implementation would materially affect the reliability of the electric system; or

4 (iii) Montana customers or electricity suppliers would be disadvantaged due to lack of a competitive
5 electricity supply market.

6 (3) The commission shall designate the public utility or one or more default suppliers to provide
7 regulated default service for those small customers of a public utility that are not being served by a
8 competitive electricity supplier and those customers who elect to receive service from the default supplier.
9 ~~The transition advisory committee shall review and address the need for continued default supply service~~
10 ~~and make recommendation to the 57th legislature.~~ Except as provided in [section 2(2)], a customer who
11 elects to receive service from the default supplier may only use the electricity for consumptive purposes
12 and shall enter into a contract with the default supplier that prohibits the customer from remarketing the
13 electricity.

14 (4) Except as provided in 69-5-101, 69-5-102, 69-5-104 through 69-5-112, and 69-8-402, a
15 public utility currently doing business in Montana as part of a single integrated multistate operation, no
16 portion of which lies within the basin of the Columbia River, may:

17 (a) defer compliance with this chapter until a time that the public utility can reasonably implement
18 customer choice in the state of the public utility's primary service territory, except that the public utility
19 shall file a transition plan pursuant to 69-8-202 to provide transition to customer choice on or before July
20 1, 2002, and must have completed the transition period to customer choice by July 1, 2006; and

21 (b) petition the commission to delay the public utility's transition plan filing until July 1, 2004.

22 (5) Upon a request from a public utility with fewer than 50 customers, the commission shall waive
23 compliance with the requirements of 69-8-104, 69-8-202 through 69-8-204, 69-8-208 through 69-8-211,
24 69-8-402, and this section.

25 (6) A customer who chose an electricity supplier prior to July 1, 2001, may make an election prior
26 to October 1, 2001, to receive electricity from the default supplier."

27

28 **Section 17.** Section 69-8-403, MCA, is amended to read:

29 **"69-8-403. Commission authority -- rulemaking authority.** (1) Beginning on the effective date of
30 a commission order regarding a public utility's transition plan, the commission shall regulate the public

1 utility's retail transmission and distribution services within the state of Montana, as provided in this
2 chapter, and may not regulate the price of ~~electricity~~ electrical energy supply except as ~~electricity~~ electrical
3 energy supply may be procured as provided in this section:

4 (a) by one or more default suppliers for those customers not being served by a competitive
5 supplier; or

6 (b) by the distribution function of a public utility for those customers that are not being served by
7 a competitive ~~electricity~~ electrical energy supplier as provided by commission rules. During the transition
8 period, those procurements may include a cost-based contract from a supply affiliate or an unregulated
9 division.

10 (2) If an approved transition plan is not in effect on [the effective date of this act], the commission
11 shall regulate the cost of electrical energy generated for sales to the customers in the service area of the
12 utility.

13 ~~(2)(3)~~ The commission shall decide if there is workable competition in the ~~electricity~~ electrical
14 energy supply market by determining whether competition is sufficient to inhibit monopoly pricing or
15 anticompetitive price leadership. In reaching a decision, the commission may not rely solely on market
16 share estimates. If the commission determines that workable competition does not exist, the commission
17 shall immediately repeal any contrary order and shall establish reasonable and just rates for large
18 customers. The rates must be based upon time period of use. Peak time, nonpeak time, and shoulder use
19 for all customers must be billed at rates that when aggregated equal the wholesale price. The commission
20 shall adopt rules to implement rates, and the default supplier shall educate the public concerning rates at
21 the various time periods.

22 ~~(3)(4)~~ The commission shall license electricity suppliers and enforce licensing provisions pursuant
23 to 69-8-404.

24 ~~(4)(5)~~ The commission shall promulgate rules that identify the licensees and ensure that the
25 offered electricity supply is provided as offered and is adequate in terms of quality, safety, and reliability.

26 ~~(5)(6)~~ The commission shall establish just and reasonable rates through established ratemaking
27 principles for public utility distribution and transmission services and shall regulate these services. The
28 commission may approve rates and charges for electricity distribution and transmission services based on
29 alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public
30 utility that the alternative method complies with this chapter, and on the public utility's transition plan.

~~(6)~~(7) The commission shall certify that a cooperative utility has adopted a transition plan that complies with this chapter. A cooperative utility's transition plan is considered certified 60 days after the cooperative utility files for certification.

~~(7)~~(8) The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices.

~~(8)~~(9) The commission shall license default suppliers and enforce default licensing provisions pursuant to 69-8-416.

~~(9)~~(10) The commission shall promulgate rules for the licensing of default suppliers on or before December 1, 1999.

~~(10)~~(11) Until the commission has determined that workable competition has developed for small customers, a default supplier's obligation to serve remains.

~~(11)~~(12) In addition to promulgating rules expressly provided for in this chapter, the commission may promulgate any other rules necessary to carry out the provision of this chapter.

~~(12)~~(13) This chapter does not give the commission the authority to:

(a) regulate cooperative utilities in any manner other than reviewing certification filings for compliance with this chapter; or

(b) compel any change to a cooperative utility's certification filing made pursuant to this chapter."

NEW SECTION. Section 18. Legislative findings -- legal action. The legislature finds that the purpose of Chapter 505, Laws of 1997, was to provide choice to all customers of electrical energy generators and suppliers. The large customers could make that choice immediately. The legislature also finds that the public service commission was given rulemaking authority to augment the choice of electrical energy suppliers. To the extent that any order issued by the public service commission, including order number 5986d, has limited the ability of large customers to choose the supplier of their choice, the order is contrary to the purpose of Chapter 505, Laws of 1997, and should be rescinded. The consumer counsel and the attorney general are directed to pursue any legal action necessary to implement this section.

NEW SECTION. Section 19. Codification instruction. (1) [Sections 1 through 4] are intended to be codified as an integral part of Title 69, chapter 8, part 2, and the provisions of Title 69, chapter 8, part 2, apply to [sections 1 through 4].

(2) [Section 5] is intended to be codified as an integral part of Title 17, chapter 6, part 3, and the provisions of Title 17, chapter 6, part 3, apply to [section 5].

(3) [Sections 6, 7, and 9] are intended to be codified as an integral part of Title 15, chapter 6, and the provisions of Title 15, chapter 6, apply to [sections 6, 7, and 9].

NEW SECTION. Section 20. Two-thirds vote required. Because ~~[section 3] authorizes [SECTIONS 3 AND 5] AUTHORIZE~~ the creation of state debt, Article VII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

NEW SECTION. Section 21. Effective date. [This act] is effective on passage and approval.

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